

Service Contract Act Guideline - 5.7.G (10/18/04)

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This guideline was extensively revised to address administrative changes throughout the document.

Definitions

Contract as used in this guideline, the term contract includes all contracts and Ordering Agreements (OAs) whether reduced to writing or not.

Service employee means any person engaged in the performance of a service contract other than any person employed in a bonafide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations. The term service employee includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

United States includes any state of the United States, District of Columbia, Puerto Rico, the Virgin Islands, outer continental shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under United States jurisdiction or any United States base or possession within a foreign country.

Wage determination means a determination of minimum wages or fringe benefits made under Sections 2(a) or 4(c) of the Act (41 U.S.C. 351(a) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

Metropolitan Statistical Area (MSA) means the locality or geographical area which is covered by a specific wage determination. The MSA is typically comprised of a particular county or cluster of counties.

Note: The counties covered in Sandia/NM blanket wage determination's MSA are: Bernalillo, Catron, Cibola, Colfax, De Baca, Guadalupe, Harding, Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Socorro, Taos, Torrance, and Valencia.

The counties covered in Sandia/CA blanket wage determination's MSA are: Alameda and Contra Costa counties.

Background - 5.7.G.1

The Service Contract Act (SCA) was enacted in 1965. It requires the observance of safety and health standards and the payment of wages and fringe benefits in accordance with a Department of Labor (DOL) wage determination based on prevailing wages, or if no wage determination pertains, on the minimum wage prescribed by the Fair Labor Standards Act (FLSA).

The SCA applies to all contracts, whose principle purpose is the furnishing of services in the United States through use of service employees. It applies to contracts which directly engage the time and effort of a Contractor whose primary purpose is to perform an identifiable task rather than furnish an end item of supply. Sandia's policy requires the Sandia Contracting Representative (SCR) to determine the applicability of the SCA.

Regardless of contract amount, service Contractors or subcontractors may not pay less than the FLSA minimum wage. For contracts over \$2,500, Department of Labor (DOL) may issue wage determinations for minimum wages and fringe benefits.

Service Contract Act Exemptions -

5.7.G.2

Contracts that are exempt from the requirements of the SCA include:

- any contract for construction, alteration, and/or repair, including painting and decorating;
- any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45);
- any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;
- any contract for furnishing services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;
- any contract for public utility services, including electric light and power, water, steam, and gas;
- any employment contract providing for direct services to a federal agency by an individual or individuals;
- any contract for operating postal contract stations for the United States Postal Service;
- installation services, maintenance services, repair services, training services, and other services if such services are procured for support of a commercial item as define in Federal Acquisition Regulation (FAR) 52.201-1, and if the source of such services:
 - offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - offers to use the same work force for providing Sandia with such services as the source used for providing such services to the general public;
- services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions (this does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed);
- contracts in which work will be done by employees exempted by the Fair Labor Standards Act of 1938, i.e., executive, administrative, and professional employees; and
- contracts exempted by the Secretary of Labor, as authorized by the SCA.

Note: When it is not readily apparent from the Statement of Work (SOW) that the contract is exempt, the Procurement Action Summary (PAS) shall explain the facts that so influenced the SCR's judgment.

Service Contract Act Requirements - 5.7.G.3

Wage Rates - 5.7.G.3.a

When the SCA applies, use this information to decide the minimum wage rates payable:

- If contract value is $> \$2,500$, then all service employees working on the contract or subcontract are to be paid not less than the wage rates and fringe benefits prevailing in the locality for employees in similar labor classifications (DOL wage determination). If no wage determination applies, all service employees are to be paid at least the FLSA minimum wage.
- If contract value is $\leq \$2,500$, then all service employees are to be paid at least the FLSA minimum wage.

Determining SCA Applicability - 5.7.G.3.b

The SCR is to follow these steps when there is the possibility that the SCA is applicable.

Step	Action
1	<p>Determines the applicability of the SCA prior to issuance of a solicitation or contract.</p> <p>Note: The action verb(s) in the SOW provide a key as to whether the principal purpose of the procurement is for service employees, professional employees or for acquisition of a product.</p> <p>Rule: The SCA is applicable to procurements whose principal purpose is to furnish services performed by a service employee (see Definitions) the SCA must be incorporated into the contract.</p>
2	<p>If the SCA is applicable, the estimated contract value exceeds \$2,500 and the services to be provided are within the Blanket Wage Determination's MSA, the SCR shall include a copy of the blanket wage determination in the solicitation.</p> <p style="text-align: center;">or</p> <p>If the SCA is applicable, the estimated contract value exceeds \$2,500 and the services to be provided are outside of the Blanket Wage</p>

Determination's MSA, the SCR shall forward:

- two copies of SA 6440-F, and
- one complete set consisting of the original and three c(3) copies of "Notice of Intention to Make a Service Contract and Response to Notice" on U.S. DOL Standard Form 98 and Attachment A of Standard Form 98a,

to Department of Energy/National Nuclear Security Administration (DOE/NNSA) at least forty-five (45) days before issuing the solicitation. When a Purchase Requisition (PR) requirement does not allow the forty-five (45) day advance period, the paperwork shall be forwarded to DOE/NNSA at the earliest possible date prior to awarding the contract with an explanation for the delay. The DOL response on the SF 98 is the DOL authorization.

Blanket Wage Determination Program - 5.7.G.3.c

The DOL Blanket Wage Determination program allows Sandia to request a wage determination on a yearly basis for services to be performed in the Albuquerque MSA and the Oakland MSA. Under this program, Sandia will submit to DOE/NNSA a projection of all Service Contract Actions that are planned for the upcoming 12-month period. This projection must list all possible occupations by job title, industry group, and any governing wage determination number. The yearly Blanket Wage Determination period for Sandia is from June 1 through May 31. The submittal to DOE/NNSA for the Blanket Wage Determination request must be submitted no later than the first day of May for each blanket determination period. The Sandia/CA facility will submit their request through the DOE/NNSA/Oakland Office. The SCRs will use the Blanket Wage Determination for all projected and unanticipated action throughout the Blanket Wage Determination period.

Actions Covered by the Blanket Wage Determination - 5.7.G.3.d

New requirements

For each new solicitation or contract exceeding \$2,500 which is subject to the SCA, the SCR shall incorporate the most current copy of the Blanket Wage Determination. Master copies of the Blanket Wage Determination are on file in the Procurement Business Operations Department.

Revisions

The SCR shall revise the contract to incorporate the most current Blanket Wage Determination when:

- a contract subject to SCA is amended to exercise an option,
- a contract subject to SCA is extended for more than ninety (90) days,

- a contract not subject to SCA is amended to change the scope and SCA covered work is added,
- annual anniversary of an SCA covered multiyear contract subject to annual fiscal appropriations,
- biennial anniversary of an SCA covered multiyear contract not subject to annual appropriations and proposed terms exceed two (2) years.

Note: Generally, all Sandia service contracts are not funded with annual appropriations.

Actions Not Covered by the Blanket Wage Determinations - 5.7.G.3.e

The SCR shall submit SF 98/98a for service contracts not covered by the Blanket Wage Determination for each new solicitation and contract in excess of \$2,500.

Revisions and the Notice of Intent - 5.7.G.3.f

The SCR shall submit SF 98/98a for service contracts not covered by the Blanket Wage Determination for:

- contract revisions which bring the contract value above \$2,500,
- a contract subject to SCA is extended for more than ninety (90) days,
- a contract subject to SCA is amended to exercise an option,
- a contract not subject to SCA is amended to change the scope and SCA covered work is added, and
- multiyear contract in excess of \$2,500 upon the:
 - annual anniversary of an SCA covered multiyear contract subject to annual fiscal appropriations, and
 - biennial anniversary of an SCA covered multiyear contract not subject to annual appropriations and proposed terms exceed two (2) years--unless otherwise advised by the Wage and Hour Division.

Note: Generally, all Sandia service contracts are not funded with annual appropriations.

If the purpose of the notice is to obtain a wage determination for an exercise of an option, an extension to the contract term, a change in scope, or the anniversary date of a multiple year contract, the SCR should ensure that Box 2 of the SF 98 is completed as follows:

- in the estimated solicitation date sub-box, indicate, as appropriate:
 - mod-exercise of option,

- mod-extension,
 - mod-change in Scope,
 - annual anniversary, or
 - biennial anniversary, and
- in the month/day/year sub-box, indicate the date the wage determination is required.
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SCA Submission of Notice Timetable - 5.7.G.4

Blanket Wage Determination Actions - 5.7.G.4.a

The request for the Blanket Wage Determination request must be submitted to DOE/NNSA, through the Procurement Policies and Procedures Team, no later than the first day of May for each blanket determination period. The Sandia/CA facility will submit their request through the DOE/NNSA/Oakland Office. The SCRs will use the Blanket Wage Determination for all projected and unanticipated action throughout the Blanket Wage Determination period.

Non-Blanket Wage Determination Actions - 5.7.G.4.b

If the contract action is for a recurring or known requirement and not covered by the Blanket Wage Determination, the SCR shall submit the notice not less than sixty (60) days (nor more than 120 days, except with the approval of the Wage and Hour Division) before the earlier of:

- issuance of any solicitations,
- commencement of negotiations,
- issuance of modification for exercise of option, contract extension, or change in scope,
- annual anniversary date of a contract for more than one year subject to annual appropriations, or
- each biennial anniversary date of a contract for more than two (2) years not subject to annual appropriations unless otherwise advised by the Wage and Hour Division.

Unknown Requirement - 5.7.G.4.c

If the contract action is for a nonrecurring or unknown requirement for which the advance planning is not feasible and not covered by the Blanket Wage Determination, the SCR shall submit the notice as soon as possible, but not later than thirty (30) days before the contracting actions in the above-mentioned paragraph. The SCR should indicate on the notice that the requirement is nonrecurring or unknown and advance planning was not feasible.

Exceptional Circumstances - 5.7.G.4.d

If exceptional circumstances prevent timely submission, the SCR shall submit the notice and the required supplemental information with a written statement of the reason for delay as soon as practicable. If an emergency situation requires an immediate wage determination response, the SCR shall request DOE/NNSA, Sandia Site Office (SSO) Contract Administrator to contact the Wage and Hour Division by telephone for guidance before submitting the notice.

Response to Late Submission - 5.7.G.4.e

If the SCR has not filed the notice within the time limits, and thus has not received a response from the DOL, and a successorship/same locality/incumbent collective bargaining agreement situation does not exist, the SCR shall request DOE/NNSA/SSO Contract Administrator to contact the Wage and Hour Division to determine when the wage determination or revision can be expected.

If the DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the SCR shall use the latest wage determination or revision, if any, contained in the existing contract. If the new or revised wage determination is received later in response to the notice, the SCR shall include it in the solicitation or contract and revision within thirty (30) calendar days of receipt. If the contract has been awarded, the SCR shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision.

SCA Standard Clauses - 5.7.G.5

The FAR Service Contract Act Clause, which is listed in Sandia's Terms and Conditions (Ts&Cs), are applicable to procurements that are subject to SCA.

In addition to the Federal Acquisition Regulation (FAR) clause, the SCR must also incorporate a wage determination clause in the solicitation and order/contract, as appropriate, based on the response to the Notice of Intention to Make a Service Contract.

When the DOL response to the Notice...

indicates a wage determination applies,

Then use...

SC 413-KS1.

- has not been received and the solicitation/contract can no longer, consistent with reasonable procurement practices, be delayed, or
 - there is no wage determination,
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SC 415-S3.

Professionals as Defined Under the SCA - 5.7.G.6

Long Test - 5.7.G.6.a

Professionals under the SCA are not just those in the traditional professions of law, medicine and theology. Included also are professions:

- having a recognized status,
- based on acquiring professional knowledge through prolonged study, and
- artistic professions, such as acting or music.

An employee paid (in salary or fee) not less than \$250/week, is a professional and is exempt from the SCA, if the:

- primary duty (viewing the job as a whole) consists of the performance of work requiring knowledge of an advanced type;
- advanced knowledge is in the field of science or learning, as opposed to the mechanical arts, customarily (but not necessarily) acquired by a prolonged course of specialized intellectual instruction and study, as opposed to a general academic education, an apprenticeship or training in routine mental, manual or physical work;
 - **Note 1:** In general, the advanced knowledge cannot be attained at high school level.
 - **Note 2:** Prolonged study generally does not include acquisition of skills through experience as opposed to formal specialized training.
- work requires the consistent exercise of discretion and judgment, i.e., the employee applies special knowledge or talents with discretion and judgment;
- work is predominantly intellectual and varied in character as opposed to routinely mental, manual, mechanical or physical;

Note: Work is intellectual and varied when the type of thinking necessary to make

interpretations and deductions in the analysis of problems is varied, even though similar outward actions may be performed.

- work is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- employee does not spend more than twenty (20) percent of workweek on activities not an essential part of and necessarily incident to the work defined in the first four (4) items above.

Short Test - 5.7.G.6.b

If an employee is paid (in salary or fee) not less than \$250/week, he is a professional and exempt from the SCA, if criteria in the first three (3) items above are met. In discussing the shorter test, 29 CFR 541.315 mentions only that the employee's primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, without mentioning the prolonged course of study in 29 CFR 541.3(a)(1). Moreover, Section 541.315 states that if an employee qualifies for exemption under this provision (i.e., the shorter test of 29 CFR 541.3(e)), it is not necessary to test his qualifications in detail under Section 541.3(a) through (e).

SCA and Other Contract Issues - 5.7.G.7

Options and Extensions - 5.7.G.7.a

Notice of Intention to Make a Service Contract must be filed when there is an:

- exercise of options, or
- contract extension exceeding ninety (90) days.

Subcontracts Flowdown - 5.7.G.7.b

The SCA applies to subcontractors, at any tier, as well as Sandia Contractors furnishing services.

Successor Employer Obligations - 5.7.G.7.c

The SCA requires a Contractor who replaces or succeeds a Contractor subject to a collective bargaining agreement to pay his employees not less than the wage rates and fringe benefits that his predecessor would have had to pay under the collective bargaining agreement. This successor obligation is limited to wages and fringe benefits. Successor Contractors are not required to adopt the seniority systems, grievance procedures or work rules of the incumbent.

Contract Value Increases - 5.7.G.7.d

Service procurements originally \$2,500 or less which are increased to over \$2,500, require that the SCA be negotiated and incorporated by revision. In addition, an SF 98 shall be submitted only if the work will continue for more than three months after the award of the additional funds.

Fringe Benefits - 5.7.G.7.e

The Secretary of Labor's wage determinations under the SCA include prevailing fringe benefits for the various classes of service employees. Fringe benefits, or a cash equivalent of the fringe benefits, or a combination of cash and benefits, are separate and payable in addition to the minimum monetary wages required. Such fringe benefits may include:

- medical or hospital care,
- pensions on retirement or death,
- compensation for injuries or illness resulting from occupational activity,
- insurance, and
- vacation and holiday pay.

Revisions - 5.7.G.7.f

Revisions to service contracts that change or add labor categories or extend the Period of Performance (POP) for more than three (3) months shall be fully justified. Added or changed labor categories and extensions of the POP for more than three (3) months must be covered by a wage determination.

SCA Documentation Requirements - 5.7.G.8

Solicitation Approval, PAS Requirements - 5.7.G.8.a

SCRs should address whether or not the SCA applies when documenting the acquisition in both the solicitation approval and the PAS. The documentation justifying that the SCA does not apply to a service contract shall be in the contract file. If the determination of the applicability of the SCA is based on the exempt status of the Contractor's employees, documentation must include consideration of the exemption tests.

Wage Determination to Contractor - 5.7.G.8.b

Any applicable wage determination shall be enclosed with the solicitation, contract, and/or contract revision and sent to the Contractor.

References - 5.7.G.9

- Guideline 5.5 - Construction Contracting
 - SC 413-KS1 - Wage Determination Pursuant to Article Entitled "Service Contract Act of 1965"
 - SC 415-S3 - Wage Determination Pursuant to Article Entitled "Service Contract Act of 1965"
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Send feedback on ideas and information on this page to the Process Expert, Adolph Bachicha.



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